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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/816,605

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Richard C. Walker

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11/04/2004

AGILENT TECHNOLOGIES  
Legal Department, 51U-PD  
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EXAMINER

BOAKYE, ALEXANDER O

ART UNIT

PAPER NUMBER

2667

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/816,605

**Applicant(s)**

WALKER ET AL.

**Examiner**

ALEXANDER BOAKYE

**Art Unit**

2667

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 10-12, 14, 15, 17-24, 26 and 28-32 is/are rejected.
- 7) ☒ Claim(s) 5, 7-9, 13, 16, 25 and 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The dependency of claim 21 is incorrect since claim 15 is an apparatus claim.

The same problem of claim 21 appears in claim 22.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 6, 10-12, 14-15, 17-21, 23, 24, 26, 28-32, are rejected under 35 U.S.C. 102(e) as being anticipated by Beigi et al. (US Patent # 6,363,056).

Regarding claim 1, Beigi teaches a network monitoring system (column 2, lines 36-38; see Figs. 1, 2 and 3 respectively) comprising a network router (107 and 111 of Fig. 1) with built-in monitoring data gathering (the purpose of receiving probe packets is for statistical bandwidth data gathering as indicated in Fig.5), the network router :

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channels through which data pass in packets, each of the packets including a packet header (column 6, lines 25-37; packet header is contained in the packet to identify source and destination addresses) ; a header copier that generates a header copy from the packet header of at least some of the packets (column 6, lines 26-32 ; see 207 of Fig. 2); and packet generator that receives the header copies and forms monitoring data packets therefrom, each of the monitoring data packets additionally representing temporal data relating to the header copies included therein (column 2, lines 50-54; column 9, lines 33-39).

Regarding claim 2, Beigi teaches that the network router additionally includes a time stamp generator that generates time stamps (column 7, lines 26-27) ; and the packet generator additionally receives the time stamps and inserts at least one of the time stamps into each of the monitoring data packets as part of the monitoring data (column 7, lines 26-27; the claimed time stamp generator is contained in the source access router).

Regarding claim 3, Beigi teaches that the packet generator inserts into each of the monitoring data packets one of the time stamps for each of the header copies included therein as part of the monitoring data (column 7, lines 26-27).

Regarding claim 4, Beigi teaches that the packet generator forms each one of the monitoring data packets from the header copies received during a predetermined interval of time to provide the temporal data (column 9, lines 33-39).

Regarding claim 6, Beigi teaches that the header copier generates a header copy from the packet headers of a11 of the packets( column 6, lines 26-32; see Fig. 2).

Regarding claim 10, Beigi teaches a monitoring data processor connected to receive the monitoring data packets and including a data base engine that operates to build a data base from the monitoring data included in the monitoring data packets (column 9, lines 40-49).

Regarding claim 11, Beigi teaches monitoring data processor additionally includes an analysis engine for analyzing the monitoring data in the data base to generate performance data relating to the network router (column 9, lines 40-49).

Regarding claim 12, Beigi teaches that the network router is a first network router (107, Fig. 1 ) and is connected to a network that includes at least one second network router ( 111, Fig. 1) with built-in monitoring data gathering; the monitoring data processor additionally includes :a communications port connected to receive additional data from the at least one second network router, the additional data including performance data and an analysis engine that analyzes the monitoring data and the additional data to generate performance data relating to performance of the network (column 9, lines 40-49 ; see FIG. 9).

Regarding claim 14, Beigi teaches that monitoring data processor is a first monitoring data processor and additionally includes a communications port configured to feed the data base (column 10, lines 9-15)

Regarding claim 15, Beigi teaches that the communications port is connected to the network ( In Fig. 1, communication port connected to ISP customer network-1 reads on the claimed communications port is connected to the network).

Regarding claims 17, 18, 19, 26 and 30, Beigi teaches a method of obtaining performance data relating to a data transmission network including a node (column 2, lines 36-38) the method comprising: passing data through the node in packets, each of the packets including a packet header (column 6, lines 25-37); copying at least some of the packet headers to obtain respective header copies as monitoring data ( column 6, lines 26-32; see 207 of Fig. 2 ) ; forming monitoring data packets from the monitoring data, the monitoring data packets additionally representing temporal data relating to the header copies included therein ( column 9, lines 33-39); transmitting the monitoring data packets (column 6 , lines 26-32); and generating the performance data from the monitoring data contained in the monitoring data packets(see Fig. 8).

Regarding claim 20, Beigi teaches generating the performance data includes: building a data base of the monitoring data received in the monitoring data packets (column 2, lines 36-38) ; and analyzing the monitoring data in the data base to generate the performance data (column 7, lines 22-26 ; column 6, lines 64-67)

Regarding claim 21, Beigi teaches transmitting the data base (column 10, lines 9-15).

Regarding claim 23, Beigi teaches that in generating the performance data, the monitoring data are analyzed to generate performance data relating to performance of the node ( column 7, lines 22-26 ; column 6, lines 64-67)

Regarding claim 24, Beigi teaches that generating the performance data includes receiving additional data relating to at least one additional node in the network, the additional data including at least one of monitoring data and

performance data (column 2, lines 36-38) ; and analyzing the monitoring data and the additional data to generate the performance data, the performance data generated relating to performance of the network (column 7, lines 22-26; column 6, lines 64-67).

Regarding claim 28, 31 and 32, Beigi teaches generating time stamps (column 7, lines 33-35); and inserting at least one of the time stamps into each one of the monitoring data packets (column 8, lines 45-52).

Regarding claim 29, Beigi teaches that in inserting at least one of the time stamps into one of the monitoring data packets, one of the time stamps is inserted for each of the header copies included therein (column 8, lines 45-52; see 207 of Fig. 2).

#### ***Allowable Subject Matter***

3. Claims 5, 7-9, 13, 16, 25 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. Claim 22 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### **Conclusion**

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Boakye whose telephone number is (571) 272-3183. The examiner can normally be reached on M-F from 8:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham, can be reached on (571) 272-3179. The fax number is (703)

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872-9306. Any inquiry of a general nature or relating to the status of this application of proceeding should be directed to the group receptionist whose telephone number is (703) 305-4750

Alexander Boakye

Patent Examiner

*AB*

10/29/04



CHI PHAM  
SUPERVISORY PATENT EXAMINER  
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*11/1/04*